

ORIGINAL

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN MARIANA ISLANDS

1	UNITED STATES OF AMERICA,	)	APPEALS DOCKET NO. 05-10034
2		)	(D.C. NO. CR. 03-00043-ARM
3	Plaintiff,	)	
4		)	Garapan, Saipan
5	vs.	)	
6		)	September 8, 2004
7	SOON KYUNG PARK, a/k/a	)	
8	Piao Cun Jing, a/k/a Dr. Park,	)	REPORTER'S ADDITIONAL TRIAL TRANSCRIPT
9		)	OF THE FORFEITURE ISSUE HEARING AFTER
10	Defendant.	)	THE VERDICT
11		)	

BEFORE THE HONORABLE ALEX R. MUNSON  
CHIEF JUDGE and Jury  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

FILED  
Clerk  
District Court

OCT - 4 2005

APPEARANCES:

For Plaintiff:

Patrick J. Smith  
Assistant United States Attorneys  
MARIANAS DISTRICT  
Horiguchi Building, Third Floor  
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Saipan, MP 96950  
Telephone: (670) 236-2979  
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and  
FBI Special Agent Douglas E. Small

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

For Defendant:

Joseph H. Arriola, Esq.  
2nd Floor Oceanside Plaza, Ste. 305  
Beach Road, Garapan  
P. O. Box 505080 CK  
Saipan, MP 96950  
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and

Pedro M. Atalig, Esq.  
(Now deceased)

Present : Defendant Mr. Soon Kyung Park

Korean Interpreters: Mr. PARK Mu Chuel for 8/30/04 only &  
for defendant Mr. Alex Tae for 8/31/04, then Ms. PARK Sun Hu  
for 9/1/04 & back with Mr. Alex Tae for 9/2/04  
to end of trial. Ms. CHO Eun Young interpreted  
for the defendant during the forfeiture hearing  
on 9/8/04.

Chinese-English  
Interpreter : Ms. Yumei Xie Rabauliman for court

1           **GARAPAN, SAIPAN, MONDAY, SEPTEMBER 8, 2004 - 3:25 P.M.**

2           THE COURT: All of the jurors have left the presence of the  
3 courtroom. Let's take up the matter now of the forfeiture. Mr.  
4 Smith, did you want to make any introductory or opening statement?

5           MR. SMITH: Briefly, Your Honor. There're three specific  
6 accounts assets to which the government seeks forfeiture. As to the  
7 Tinian University account at the Bank of Guam as well as the Saipan  
8 University account at the Bank of Guam, there's ample evidence in the  
9 record to support that probable cause determination.  
10

11           We also heard from Special Agent Small with respect to the  
12 Jesus I. Taisague account. And the testimony came out through  
13 Special Agent Small, Your Honor, that funds were disbursed from the  
14 Bank of Guam account in which tuition funds, obtained from students,  
15 had been deposited, that a check was cut to Jesus Taisague that was  
16 converted into a money order and then deposited in Jesus Taisague's  
17 account, and then seized pursuant to a seizure warrant.  
18

19           The only issue that's not in the record with respect to  
20 this account is simply the identifying information and the location  
21 of the account. And on that issue, I would call Special Agent Small  
22 in just a minute just to establish by refreshing his recollection  
23 with a seizure warrant where the account is located and what the  
24 account number is.  
25

1 Judge, as to the money judgment, the government is entitled  
2 to a money judgment of all the funds traceable to the scheme. We  
3 summed up, as Your Honor heard, and there is proof in the record,  
4 that the proceeds defrauded exceeded \$500,000. That's the amount  
5 that's pled in the indictment. So that's what we're limited to in  
6 seeking the money judgment. But we ask for money judgment based upon  
7 the same analysis that I argued to the jury in finding the loss  
8 figure. We have a loss figure from the jury beyond a reasonable  
9 doubt of \$400,000. But as I summed up to the jury, 88 x 6,700 is  
10 approximately, I think, it was \$560,000. I have to check the figure  
11 again. But it's in excess of \$500,000. So that's what I plan to do,  
12 call Special Agent Small briefly to establish the identity of the  
13 account which is the subject of Question 3 on the proposed verdict  
14 form. And that'll be it for additional proof.  
15  
16  
17

18 THE COURT: Thank you. Mr. Arriola, did you want to make  
19 any kind of opening statement at this time?

20 MR. ARRIOLA: No, Your Honor.

21 THE COURT: Mr. Smith, you may call your first witness.

22 MR. SMITH: Your Honor, the government calls Special Agent  
23 Douglas E. Small.  
24

25 THE WITNESS: Do I stand or --

THE COURT: You may be seated. Special Agent Small, you

1 understand that you are still under oath?

2 THE WITNESS: Yes, I do.

3 THE COURT: Thank you. You may proceed, Mr. Smith.

4 MR. SMITH: Thank you, Your Honor. May I approach this  
5 witness?  
6

7 THE COURT: You may.

8 **DOUGLAS E. SMALL,**

9 recalled to the stand on behalf of the government, testified as  
10 follows:  
11

12 **DIRECT EXAMINATION**

13 **BY MR. SMITH:**

14 Q Agent Small, I've placed before you what's marked as  
15 Government's Exhibit 35 for identification, and I'd ask, please, if  
16 you could refresh your recollection using that with respect to the  
17 name of the account and account number into which you previously  
18 testified Jesus Taisague deposited funds obtained from Saipan  
19 University.  
20

21 A Yes, it's the Bank of Hawaii account in Saipan. It's under  
22 Jesus I. Taisague, and the account number is 0032297 -- pardon me --  
23 93794.  
24

25 THE REPORTER: What's the beginning, 00?

THE WITNESS: 00322-93794.

1 Q BY MR. SMITH: And just so we're clear, earlier in your  
2 testimony, you told us that Jesus Taisague had obtained funds that  
3 was supposed to go towards the surety bond and had instead placed  
4 those account funds from the Tinian University account at Bank of  
5 Guam into this account that you just referenced.

6 A Yes, that's correct.

7 Q And were those funds proceeds of the Saipan University tuition  
8 scheme to get funds from students in China?  
9

10 A Yes.

11 MR. SMITH: No further questions, Your Honor.  
12

13 **(End of Mr. Smith's direct of Special Agent Douglas E. Small.)**

14 THE COURT: Thank you, Mr. Smith. Mr. Arriola, did you want  
15 to cross-examine?

16 MR. ARRIOLA: Your Honor, we have no questions.

17 THE COURT: Thank you, sir. You may step down. Do you have  
18 any other witnesses?  
19

20 MR. SMITH: No, Your Honor.

21 THE COURT: Do you have any witnesses?

22 MR. ARRIOLA: No, Your Honor.

23 THE COURT: Do you want to make any argument at this time?

24 MR. SMITH: Thank you, Your Honor. I think in my opening  
25 remarks, I summarized why the court should find, by preponderance of

1 the evidence, "yes" as to each of the first three questions in the  
2 proposed special verdict form that would have gone to the jury. Your  
3 Honor heard ample evidence of the receipt of funds into the Bank of  
4 Guam account. Those records are in evidence, and the court's  
5 permitted to rely on those in making the forfeiture determination.  
6 We had specific evidence of wire transfers into the account. You  
7 also have Government's Exhibit 125, which was the internal summary  
8 prepared by this fellow James at Saipan University. The Saipan  
9 University account from Bank of Guam is also in the record. And now  
10 we have the testimony that links up the Jesus I. Taisague account to  
11 the disbursement out of the Bank of Guam account, Tinian University.  
12 There's a check that's in that Government's Exhibit 125 to Jesus  
13 Taisague, and that links up with the funds that were then deposited  
14 by Jesus Taisague into his own account.

15  
16  
17 As to the money judgment, Your Honor, as I noted before, we  
18 already have a beyond a reasonable doubt finding as to \$400,000. The  
19 additional \$100,000 to support this money judgment is simply, again,  
20 an average analysis based upon what students paid in China;  
21 approximately \$6,700 each and 88 students yields a sum in excess of  
22 \$500,000 if you multiply that out.  
23

24 Those are the findings we're asking the court to make.

25 THE COURT: Thank you. Mr. Arriola?

1 MR. ARRIOLA: Your Honor, we waive any arguments.

2 THE COURT: All right, the court is ready to rule. I do  
3 find by a preponderance of the evidence that all United States  
4 currency funds or other monetary instruments credited to Account  
5 0103-142160 in the name of Tinian University, located at the Bank of  
6 Guam, Saipan, CNMI, constitutes or is derived from proceeds traceable  
7 to the travel fund violation. And, accordingly, it is subject to and  
8 is forfeited.  
9

10 I base that on all of the evidence presented in this case.  
11 Certainly, it satisfies the preponderance of the evidence standard or  
12 more probable than not. Quite frankly, if I had to, I would make a  
13 finding beyond a reasonable doubt; not necessary here.  
14

15 I also make a finding by a preponderance of the evidence  
16 that all United States currency funds or other monetary instruments  
17 credited to Account No. 0103-150257 in the name of Saipan University,  
18 located at the Bank of Guam, Saipan, CNMI, constitutes or is derived  
19 from proceeds traceable to the travel fraud violation.  
20

21 Accordingly, those funds are subject to and are -- subject  
22 to forfeiture and are forfeited.

23 Again, I base my finding upon all of the evidence that's  
24 presented in this case. The standard of the preponderance of the  
25 evidence is so well satisfied. Again, I would find beyond a



1 reasonable doubt if it were necessary.

2           Relative -- I do make a finding by a preponderance of the  
3 evidence that all United States currency funds or other monetary  
4 instruments credited to Account No. 0032293794 in the name of Jesus  
5 I. Taisague, located at the Bank of Hawaii, Saipan, CNMI, constitutes  
6 or is derived from proceeds traceable to the travel fraud violation.  
7

8           This money was taken out of the Bank of Saipan -- I mean,  
9 the University of, Saipan University's account and deposited for  
10 safety reasons -- as what the evidence showed, so that it wouldn't be  
11 dissipated -- into Mr. Taisague's account at the Bank of Hawaii. And  
12 I do find from all of the evidence presented in the case that this  
13 money does constitute or is derived from proceeds traceable to the  
14 travel fraud violation and is subject to forfeiture and is forfeited.  
15

16           Again, if I had to make a finding, which I don't, it would  
17 certainly be well beyond the preponderance of the evidence.  
18

19           I also make a finding by a preponderance of the evidence  
20 that \$500,000 constitutes or is derived from proceeds traceable to  
21 the travel fraud violation.

22           If you take the average figure of \$67,000 and multiply that  
23 times 88 students, you come up with \$589,600.00, which is certainly  
24 way beyond \$500,000. And, accordingly, that amount, \$500,000, I  
25 find, is derived from proceeds traceable to the travel fraud

1 violation.

2 Anything else regarding this issue?

3 MR. SMITH: Yes, Judge. Pursuant to Rule 32.2, we'll submit  
4 a proposed preliminary order of forfeiture. And I think the next  
5 step in the process is to see whether if there is any third-party  
6 claims filed with respect to those assets. And then a final order of  
7 forfeiture can follow from that. So we'll follow the procedure in  
8 Rule 32.2.  
9

10 THE COURT: And you'll prepare an order to that effect?

11 MR. SMITH: We will.  
12

13 THE COURT: Thank you. Anything further from the defense on  
14 this issue?

15 MR. ARRIOLA: No, Your Honor.

16 THE COURT: Mr. Park, the court finds you guilty as charged  
17 of the three counts in the superseding indictment charging you with  
18 interstate and foreign transportation of persons in execution of a  
19 scheme through fraud on or about September 8, 2003 in Count I.  
20

21 Count II, which is the same charge, on or about September  
22 27, 2003, and also Count III, which is the same charge, which found  
23 you guilty on or about -- I mean, which took place on or about  
24 October 5, 2003, the court also finds beyond a reasonable doubt that  
25 you were an organizer or leader of criminal activity charged in the

1 superseding indictment.

2 The court also finds beyond a reasonable doubt with respect  
3 to the scheme to defraud alleged in the superseding indictment that  
4 the loss exceeded \$400,000. The special question, of course, was  
5 found by the jury.  
6

7 The court also finds beyond a reasonable doubt with respect  
8 to the scheme to defraud alleged in the superseding indictment that  
9 the offense was committed through mass marketing.  
10

11 The court also finds beyond a reasonable doubt with respect  
12 to the scheme to defraud alleged in the indictment that there were at  
13 least 50 victims.

14 And the court also finds beyond a reasonable doubt with  
15 respect to the scheme to defraud alleged in the indictment that a  
16 substantial fraudulent scheme was committed from outside of the  
17 United States.  
18

19 Are there any exceptions to the verdict, Mr. Smith?

20 MR. SMITH: No, Your Honor.

21 THE COURT: Mr. Arriola?

22 MR. ARRIOLA: No, Your Honor.

23 THE COURT: Mr. Park, because you have been found guilty,  
24 sentencing must take place. I will set this matter for sentencing on  
25 Tuesday, December 14, 2004 at 9:00 o'clock in the morning in this

1 court. I'll also order that the presentence investigation report is  
2 due on or before November 9, 2004.

3 Mr. Park, before sentencing can occur in this case, the  
4 Probation Department has to conduct an investigation. You are  
5 required to cooperate in that investigation by meeting with the  
6 Probation Officer and giving information. At any time you meet with  
7 the Probation Officer, you may have your attorney present with you.  
8 Do you understand that?  
9

10 THE DEFENDANT: (After translation, defendant answered in  
11 English) Yes.  
12

13 THE COURT: Mr. Park, after the Probation Officer has  
14 completed the investigation, they will prepare a written report and  
15 give a copy to you and your lawyer. If you think there are any  
16 mistakes in the written report, you can meet with the Probation  
17 Officer. And if you can convince them that there's a mistake, they  
18 will amend the report. If you cannot convince them to amend the  
19 report, both your lawyer and you, at the time of sentencing, will be  
20 able to address the court. And the judge will make a determination  
21 whether to accept or to reject the facts reported. Do you understand  
22 that?  
23

24 THE DEFENDANT: (In English) Yes.  
25

THE COURT: At the sentencing hearing, your lawyer will be

1 able to address the court on your behalf. And you, too, will be able  
2 to address the court if you care to make your allocution or tell the  
3 sentencing judge anything you think would be important for the judge  
4 to know before he imposes a sentence. And if you care to make any  
5 statement, you can do it not under oath. Do you understand that?  
6

7 THE DEFENDANT: (In English) Yes.

8 THE COURT: Is there anything further to come before the  
9 court regarding this case from the government?

10 MR. SMITH: No, Your Honor.

11 THE COURT: Anything from the defense?  
12

13 MR. ARRIOLA: No, Your Honor. Thank you.

14 THE COURT: There being nothing further to come before the  
15 court regarding this matter, I will remand the defendant back into  
16 the custody of the United States marshal until further order of the  
17 court and we will stand in adjournment.  
18

19  
20 (Court recessed at 4:00 p.m., Wednesday, September 8, 2004.)  
21  
22 -----  
23  
24  
25

1  
2 COMMONWEALTH OF THE )  
3 NORTHERN MARIANA ISLANDS ) ss.  
4 SAIPAN, MP )  
5 \_\_\_\_\_ )  
6

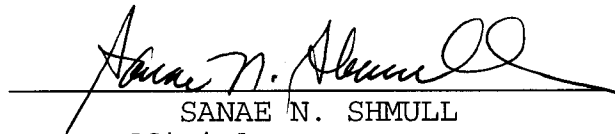
7 I, SANAE N. SHMULL, Official Court Reporter for the  
8 United States District Court for the Northern Mariana Islands, do  
9 hereby certify:

10 That the foregoing additional jury trial transcript of the  
11 forfeiture hearing after the verdict in Criminal Case No. 04-00043,  
12 *United States of America v. PARK Soon Kyung, aka Piao Cun Jing, aka*  
13 *Dr. Park*, consisting of 13 pages was taken down by me  
14 stenographically with a back-up tape recording device at the times  
15 and place indicated herein.

16 That the foregoing transcript is a true and correct record  
17 of the proceedings transcribed by me to the best of my ability at the  
18 request of Attorney Gregory Baka, court-appointed attorney for  
19 defendant-appellant.

20 I further certify that I am not interested in the events of  
21 the action.

22 IN WITNESS WHEREOF, I have subscribed my name and signature  
23 this 4th day of October 2005.  
24  
25

  
SANAE N. SHMULL  
Official Court Reporter